

Background

This dispute involves a U.S. antidumping order on dynamic random access semiconductors (DRAMs) from the Republic of Korea. DRAMs are used primarily for main memory in computers. Following an investigation which resulted in findings of dumping and injury by the Department of Commerce (Commerce) and the U.S. International Trade Commission, respectively, Commerce issued an antidumping order on May 10, 1993. In that order, Commerce assigned dumping margins of 4.97 percent to LG Semicon and 11.16 percent to Hyundai.

Thereafter, Commerce conducted two administrative reviews of the DRAMs order that together covered sales made between May 1, 1993 through April 30, 1995. Commerce found that sales of DRAMs by LG Semicon and Hyundai during this time period had not been dumped.

On June 25, 1996, Commerce initiated a third administrative review of the DRAMs order for the period from May 1, 1995 to April 30, 1996. In connection with that review, Commerce considered requests from LG Semicon and Hyundai that the order be revoked with respect to them. Under Commerce regulations, an antidumping order may be revoked if (1) there are three consecutive years of no dumping; (2) the firm requesting revocation agrees in writing to immediate reinstatement in the order if Commerce subsequently finds that the firm is dumping; and (3) Commerce is satisfied that it is not likely that the firm will in the future sell the merchandise at a dumped price.

Commerce issued its final determination in the third administrative review on July 24, 1997. Commerce found that LG Semicon and Hyundai had not engaged in dumping of DRAMs during the relevant time period, and also found that both firms had agreed to immediate reinstatement in the order if they should be found to be dumping in the future. However, based on its careful examination of an extensive factual record (including evidence relating to the period following the period of review), Commerce concluded that it was not satisfied that there was no likelihood of future dumping by LG Semicon and Hyundai if the antidumping order were revoked. In reaching this conclusion, Commerce took particular note of the dramatic decline in DRAMs prices throughout 1996 and the fact that, during prior market downturns, the two firms had engaged in dumping. Accordingly, although Commerce did not assess any antidumping duties on imports covered by the third administrative review, it declined to revoke the antidumping order with respect to LG Semicon and Hyundai.

On August 15, 1997, the United States received a request by Korea for WTO dispute settlement consultations concerning Commerce's third administrative review. In its request, Korea alleged that Commerce's decision not to revoke the antidumping order was inconsistent with Articles 6 and 11 of the Antidumping Agreement and Article VI of the GATT. Consultations were held on October 9, 1997. On November 6, Korea requested the establishment of a panel, adding allegations of inconsistencies with Articles 2, 3, and 17 of the Antidumping Agreement and Articles I:1, X:1, and X:3 of the GATT. The WTO Dispute Settlement Body established a panel in this dispute at its meeting on January 16, 1998. On March 10, Korea requested that the Director-General of the WTO complete the selection of panel members, and on March 19, 1998, the Director-General announced the following panelists: Crawford Falconer (Chair - New

Zealand), Prof. Meinhard Hilf (Germany), and Marta Lemme (Brazil). Korea made its first submission to the panel on April 30, 1998. The United States made its first submission to the panel on May 28. The first meeting of the panel then took place on June 18-19. The parties filed rebuttal submissions on July 10, and the second meeting of the panel took place on July 21-22, 1998.

In the meantime, Commerce initiated and conducted its fourth administrative review of the DRAMs order covering the time period May 1, 1996 to April 30, 1997. In this review, LG Semicon and Hyundai had renewed their requests for revocation of the antidumping order. Commerce issued the final results of its review on September 23, 1998, and found dumping margins of 9.28 percent for LG Semicon and 3.95 percent for Hyundai. As a result of these findings, Commerce also found that the two firms failed to satisfy the first requirement for revocation from the order; i.e., three consecutive years of no dumping. Therefore, Commerce denied their requests for revocation.

The final report is scheduled to be circulated to all WTO Members in mid-December. Either party may appeal the legal findings of the panel by referring the matter to the WTO Appellate Body. The appeal process generally takes about six months from the date on which the panel report is circulated.

Among the important issues on which the panel upheld the United States were the following: (1) a prospective analysis is appropriate in determining whether to revoke or maintain an antidumping order; (2) one need not have mathematical certainty of a recurrence of dumping in order to maintain an antidumping order; (3) the mere absence of dumping for three years does not require authorities to self-initiate an injury review of an antidumping order; (4) Commerce's regulation establishing a 0.5 percent *de minimis* standard for the post-investigation phase of an antidumping proceeding is consistent with the Antidumping Agreement; and (5) Korea could not use a challenge to a post-WTO administrative review by Commerce as a vehicle for attacking pre-WTO determinations made by Commerce and the U.S. International Trade Commission regarding the product coverage of the antidumping order. More generally, the panel rejected various Korean claims that Commerce's analysis of the facts was flawed and biased. Finally, the Panel rejected Korea's request that the Panel suggest that the United States revoke the antidumping order on DRAMs. Instead, the Panel found that there were a "range of possible ways" in which the United States could implement the Panel's recommendations.

The U.S. submissions to the panel, which are available in the USTR Reading Room, described in detail how Commerce's determination was consistent with U.S. obligations under the relevant WTO agreements.